HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.307 of 2007

Appellant **Defendant**	Sakina Bee, Widow of Nanhe Minya, Aged about 80 years, Resident of Jawaharbada, Juni Line, Bilaspur, Tahsil and District Bilaspur (C.G.)

versus

Respondent **Plaintiff**	Jeetlal, aged about 42 years, S/o late Chiraunji Lal, Tent House Owner, R/o Old Bus Stand, behind Suvidha Lodge, Bilaspur, Tahsil and District Bilaspur (C.G.)

Second appeal under Section 100 of the Code of Civil Procedure

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Present :
Shri K. A. Ansari, Sr. Advocate with Shri Firoj Siddiqui, counsel for the appellant.
Shri Vishnu Koshta with Shri Gautam Khetrapal, counsel for the respondent.

ORAL ORDER
(Passed on 13th August, 2007)

Heard on I.A.No.02 of 2007 for taking documents on record.

(2) Application is allowed. Documents are taken on record.

(3) Also heard on admission as also I.A.No.01 for grant of stay.

(4) The appellant/defendant is aggrieved by the judgment and decree dated 22-06-2007 passed by the First Additional District Judge, Bilaspur (C.G.) in Civil Appeal No.16-A/2006 whereby the judgment and decree dated 25-01-2006 passed by the 2nd Civil Judge Class-I, Bilaspur in Civil Suit No.331-A/2005 granting eviction of the appellant/defendant from the suit accommodation under section 12(1) (e) of the Chhattisgarh Accommodation Control Act (hereinafter referred to as the Act) was affirmed.

(5) Shri Ansari, learned Senior Advocate appearing on behalf of the appellant/defendant urged two grounds in this appeal as under:

(A) that, both the Courts below have failed to consider the admission made by the landlord Jeetlal in para-10 and to objectively ascertain the bonafide requirement of the landlord. It was urged that admittedly, the landlord was in possession of accommodation sufficient for his residence and was actually residing in it.

(B) secondly, it was urged that the lower appellate Court has erred in rejecting the application under Order 41 Rule 27 of C.P.C. filed by the appellant/defendant to show that the respondent/plaintiff had sold the adjacent plot before the institution of suit.

(6) Shri Vishnu Koshta, learned counsel for the respondent/plaintiff opposed the application I.A.No.1 for stay and contended that there was a clear admission by the appellant/defendant that she was not residing in the suit accommodation since about a year and both the Courts below have upon an objective assessment of the bonafide requirement of the landlord-plaintiff recorded a finding that the suit accommodation being nearer to the place of business was required bonafide for residence by the landlord/plaintiff. It was also urged that the lower appellate Court rightly rejected the application under Order 41 Rule 27 of C.P.C. for cogent reasons since the sale deed was executed prior to the date of institution of suit.

(7) Having heard rival submissions, I have perused the impugned judgment as also the judgment delivered by the trial Court. I have also considered the ground for rejection of the application under Order 41 Rule 27 of C.P.C. It is not disputed the document i.e. sale deed sought to be produced was executed prior to the institution of suit.

(8) It is well settled that the bonafide requirement of the plaintiff has to be tested on the date of suit and before granting eviction under section 12 (1) (e) of the Act, the Court is required to objectively assess and ascertain the bonafide requirement of the landlord. In the present case, both the Courts below have upon an objective assessment recorded a finding of fact that being nearer to the place of business of the respondent/plaintiff, the suit accommodation was required bonafide by the landlord/plaintiff for his residence. In view of a concurrent finding of fact recorded by both the Courts below, no substantial question of law arises for determination in this appeal.

(9) In the result, the appeal is dismissed at the stage of admission. I..A.No.1 for grant of stay also stands dismissed.

(10) At this stage, Shri K. A. Ansari, learned Senior Advocate appearing on behalf of the appellant/defendant prayed that two months time be granted to the appellant/defendant to vacate the suit accommodation. Shri Koshta, learned counsel for the respondent/plaintiff did not oppose the prayer. As prayed, two months time is granted to the appellant/defendant to vacate the suit accommodation.

Sd/-
Dilip Raosaheb Deshmukh
Judge